



February 20, 2007

SENATE BILL No. 534

DIGEST OF SB 534 (Updated February 16, 2007 4:11 pm - DI 106)

Citations Affected: IC 31-17; IC 31-19; IC 31-35; IC 34-24; IC 35-46; noncode.

Synopsis: Various family law matters. Provides that: (1) proceedings for voluntary termination of parent-child relationships and adoptions are not governed by the uniform child custody jurisdiction law; (2) certain adoption notices are valid regardless of whether the notice is served within or outside Indiana; (3) adoption notices served on a putative father who is not a resident of Indiana are valid if certain conditions are met; and (4) a parent who has given valid consent to the termination of the parent-child relationship may waive certain notice requirements. Allows a petition for adoption to be amended to substitute another petitioner under certain circumstances. Requires that if a parent has given written consent, been advised concerning a voluntary termination of the parent-child relationship, and appears in court, the court may consider only whether the consent for the termination of the parent-child relationship was voluntary. Changes the period within which a putative father may register with the putative father registry to be entitled to notice of an adoption. Makes it a Class A misdemeanor to publish an advertisement in a telephone directory: (1) that a child is offered or wanted for adoption; or (2) to place or locate a child for adoption; unless the advertisement is placed by an attorney or a licensed child placing agency and certain other requirements are met.

Effective: July 1, 2007.

Lubbers, Miller, Broden

January 23, 2007, read first time and referred to Committee on Judiciary.
February 19, 2007, amended, reported favorably — Do Pass.

SB 534—LS 7255/DI 110+



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February 20, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 534

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 31-17-3-2, AS AMENDED BY P.L.68-2005,
2 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 2. As used in this chapter:

4 (1) "contestant" means a person, including a parent, who claims
5 a right to custody or parenting time rights with respect to a child;

6 (2) "custody determination" means a court decision and court
7 orders and instructions providing for the custody of a child,
8 including parenting time rights; it does not include a decision
9 relating to child support or any other monetary obligation of any
10 person;

11 (3) "custody proceeding" includes proceedings in which a custody
12 determination is one of several issues, such as an action for
13 dissolution of marriage, but does not include child in need of
14 services, **voluntary termination of a parent-child relationship,**
15 **or adoption** proceedings;

16 (4) "decree" or "custody decree" means a custody determination
17 contained in a judicial decree or order made in a custody

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proceeding, and includes an initial decree and a modification decree;

(5) "home state" means the state in which the child, immediately preceding the time involved, lived with the child's parents, a parent, or a person acting as parent, for at least six (6) consecutive months, and in the case of a child less than six (6) months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six (6) month or other period;

(6) "initial decree" means the first custody decree concerning a particular child;

(7) "modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;

(8) "physical custody" means actual possession and control of a child;

(9) "person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and

(10) "state" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

SECTION 2. IC 31-19-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) A resident of Indiana who seeks to adopt a child less than eighteen (18) years of age may, by attorney of record, file a petition for adoption with the clerk of the court having probate jurisdiction in the county in which:

(1) the petitioner for adoption resides;

(2) a licensed child placing agency or governmental agency having custody of the child is located; or

(3) the child resides.

(b) The county in which the petition for adoption may be filed is a matter of venue and not jurisdiction.

(c) Subject to IC 31-19-9-3, if an individual who files a petition for adoption of a child:

(1) decides not to adopt the child; or

(2) is unable to adopt the child;

the petition for adoption may be amended or a second petition may be filed in the same action to substitute another individual who intends to adopt the child as the petitioner for adoption. The amended petition or second petition under this subsection relates back to the date of the original petition.

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SECTION 3. IC 31-19-2.5-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 5. A notice served in accordance with IC 31-19-4 or IC 31-19-4.5 is valid regardless of whether the notice is served within or outside Indiana.**

SECTION 4. IC 31-19-3-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 9. (a) A notice served in accordance with this chapter on a putative father who is a resident of Indiana is valid regardless of whether the notice is served within or outside Indiana.**

(b) A notice served in accordance with this chapter outside Indiana on a putative father who is not a resident of Indiana is valid if the child was conceived:

(1) in Indiana; or

(2) outside Indiana, if the laws of the state in which the:

(A) father:

(i) is served notice; or

(ii) resides; or

(B) child was conceived;

allows a paternity or similar action to be filed before the birth of a child.

SECTION 5. IC 31-19-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 12. (a) To be entitled to notice of an adoption under IC 31-19-3 or IC 31-19-4, a putative father must register with the state department of health under section 5 of this chapter not later than:**

(1) thirty (30) days after the child's birth; or

(2) the earlier of the date of the filing of a petition for the:

(A) child's adoption; or

(B) termination of the parent-child relationship between the child and the child's mother;

whichever occurs later.

(b) A putative father may register under subsection (a) before the child's birth.

SECTION 6. IC 31-19-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3. (a) A consent to adoption that does not name or otherwise identify a petitioner for adoption is valid if the consent to adoption contains a statement, by the person consenting to adoption, that the person consenting to adoption voluntarily executed the consent to adoption without disclosure of the name or other identification of the petitioner for adoption.**

(b) A petitioner may be substituted under IC 31-19-2-2 if:

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(1) the consent to adoption executed by a child's mother contains a statement, by the mother consenting to adoption, that the mother voluntarily agrees that a petitioner for the adoption may be substituted without additional consent from the mother; or

(2) the mother executes a written consent to the substitution of a petitioner for the adoption.

The mother's consent under this subsection is not conditional regardless of whether the mother consents or does not consent to the substitution of petitioners under this subsection.

SECTION 7. IC 31-19-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) A consent to adoption may be withdrawn not later than thirty (30) days after consent to adoption is signed if:

(1) the court finds, after notice and opportunity to be heard afforded to the petitioner for adoption, that the person seeking the withdrawal is acting in the best interest of the person sought to be adopted; and

(2) the court orders the withdrawal.

(b) A consent to adoption may not be withdrawn after:

(1) thirty (30) days after the consent to adoption is signed;

(2) the person who signs the consent to adoption appears, **in person or by telephonic communications or video conferencing**, before a court in which the petition for adoption has been or will be filed **and acknowledges that the person:**

(A) understood the consequences of the signing of the consent to adoption;

(B) freely and voluntarily signed the consent to adoption; and

(C) believes that adoption is in the best interests of the person to be adopted; or

(3) the person who signs the consent to adoption appears, **in person or by telephonic communications or video conferencing**, before a court of competent jurisdiction if the parent is outside of Indiana and acknowledges that the person:

(A) understood the consequences of the signing of the consent to adoption;

(B) freely and voluntarily signed the consent to adoption; and

(C) believes that adoption is in the best interests of the person to be adopted;

whichever occurs first.

(c) If a hearing under this section is conducted by telephonic

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1 **communication or video conferencing, the court shall ensure that**
 2 **the hearing is recorded.**

3 SECTION 8. IC 31-35-1-4 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) If requested by
 5 the parents:

6 (1) the county office of family and children; or

7 (2) a licensed child placing agency;

8 may sign and file a verified petition with the juvenile or probate court
 9 for the voluntary termination of the parent-child relationship.

10 (b) The petition must:

11 (1) be entitled "In the Matter of the Termination of the
 12 Parent-Child Relationship of _____, a child, and
 13 _____, the child's parent (or parents)"; and

14 (2) allege that:

15 (A) the parents are the child's natural or adoptive parents;

16 (B) the parents, including the alleged or adjudicated father if
 17 the child was born out of wedlock:

18 (i) knowingly and voluntarily consent to the termination of
 19 the parent-child relationship; or

20 (ii) are not required to consent to the termination of the
 21 parent-child relationship under section ~~6(b)~~ 6(c) of this
 22 chapter;

23 (C) termination is in the child's best interest; and

24 (D) the petitioner has developed a satisfactory plan of care and
 25 treatment for the child.

26 SECTION 9. IC 31-35-1-5 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. **(a) Except as**
 28 **provided in subsection (b),** the parents shall be notified of the hearing
 29 in accordance with IC 31-32-9.

30 **(b) A parent who has made a valid consent to the termination of**
 31 **a parent-child relationship may waive the notice required by**
 32 **subsection (a) if the waiver:**

33 (1) is in writing either:

34 (A) in the parent's consent to terminate the parent-child
 35 relationship; or

36 (B) in a separate document;

37 (2) is signed by the parent in the presence of a notary public;
 38 and

39 (3) contains an acknowledgment that:

40 (A) the waiver is irrevocable; and

41 (B) the parent will not receive notice of:

42 (i) adoption; or

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**(ii) termination of parent-child relationship;
proceedings.**

SECTION 10. IC 31-35-1-6, AS AMENDED BY P.L.130-2005,
SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2007]: Sec. 6. (a) Except as provided in subsection ~~(b)~~, (c),
the parents must give their consent in open court unless the court
makes findings of fact upon the record that:

(1) the parents gave their consent in writing before a person
authorized by law to take acknowledgments; **and**

(2) the parents were:

(A) advised in accordance with section 12 of this chapter; and

**(B) advised that if they choose to appear in open court, the
only issue before the court is whether their consent was
voluntary.**

~~(3) the parents failed to appear.~~

(b) If:

(1) the court finds the conditions under subsection (a)(1) and

(a)(2) have been met; and

(2) a parent appears in open court;

**a court may consider only the issue of whether the parent's consent
was voluntary.**

~~(b)~~ (c) The consent of a parent to the termination of the parent-child
relationship under this chapter is not required if:

(1) consent to the termination of the parent-child relationship is
implied under section 4.5 of this chapter, if the parent is the
putative father;

(2) the parent's consent to the adoption of the child would not be
required under:

(A) IC 31-19-9-8;

(B) IC 31-19-9-9; or

(C) IC 31-19-9-10; or

(3) the child's biological father denies paternity of the child before
or after the birth of the child if the denial of paternity:

(A) is in writing;

(B) is signed by the child's father in the presence of a notary
public; and

(C) contains an acknowledgment that:

(i) the denial of paternity is irrevocable; and

(ii) the child's father will not receive notice of adoption or
termination of parent-child relationship proceedings.

A child's father who denies paternity of the child under subdivision (3)
may not challenge or contest the child's adoption or termination of the

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1 parent-child relationship.

2 SECTION 11. IC 31-35-1-12, AS AMENDED BY P.L.68-2005,
3 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2007]: Sec. 12. For purposes of sections 6 and 8 of this
5 chapter, the parents must be advised that:

6 (1) their consent is permanent and cannot be revoked or set aside
7 unless it was obtained by fraud or duress or unless the parent is
8 incompetent;

9 (2) when the court terminates the parent-child relationship:

10 (A) all rights, powers, privileges, immunities, duties, and
11 obligations, including any rights to custody, control, parenting
12 time, or support pertaining to the relationship, are permanently
13 terminated; and

14 (B) their consent to the child's adoption is not required;

15 (3) the parents have a right to the:

16 (A) care;

17 (B) custody; and

18 (C) control;

19 of their child as long as the parents fulfill their parental
20 obligations;

21 (4) the parents have a right to a judicial determination of any
22 alleged failure to fulfill their parental obligations in a proceeding
23 to adjudicate their child a delinquent child or a child in need of
24 services;

25 (5) the parents have a right to assistance in fulfilling their parental
26 obligations after a court has determined that the parents are not
27 doing so;

28 (6) proceedings to terminate the parent-child relationship against
29 the will of the parents can be initiated only after:

30 (A) the child has been adjudicated a delinquent child or a child
31 in need of services and removed from their custody following
32 the adjudication; or

33 (B) a parent has been convicted and imprisoned for an offense
34 listed in IC 31-35-3-4 (or has been convicted and imprisoned
35 for an offense listed in IC 31-6-5-4.2(a) before its repeal), the
36 child has been removed from the custody of the parents under
37 a dispositional decree, and the child has been removed from
38 the custody of the parents for six (6) months under a court
39 order;

40 (7) the parents are entitled to representation by counsel, provided
41 by the state if necessary, throughout any proceedings to terminate
42 the parent-child relationship against the will of the parents; and

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(8) the parents will receive notice of the hearing, **unless notice is waived under section 5(b) of this chapter**, at which the court will decide if their consent was voluntary, and the parents may appear at the hearing and allege that the consent was not voluntary.

SECTION 12. IC 34-24-3-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.5. A prospective adoptive parent may bring a civil action against a person who commits unauthorized adoption facilitation under IC 35-46-1-22, even if the person has not been prosecuted or convicted of the offense under IC 35-46-1-22. In an action under this section, a prospective adoptive parent may seek an award of the following:**

- (1) **An amount not to exceed three (3) times the amount that the prospective adoptive parent paid for the adoption services provided to the prospective adoptive parent in the commission of unauthorized adoption facilitation under IC 35-46-1-22.**
- (2) **The costs of the action.**
- (3) **A reasonable attorney's fee.**

SECTION 13. IC 34-24-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3.** It is not a defense to an action for punitive damages that the defendant is subject to criminal prosecution for the act or omission that gave rise to the civil action. However, a person may not recover both:

- (1) punitive damages; and
- (2) the amounts provided for under section 1 **or 1.5** of this chapter.

SECTION 14. IC 35-46-1-21 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 21. (a) Only a person that is an attorney licensed to practice law or a child placing agency licensed under the laws of any state or the District of Columbia may advertise, on the person's own behalf, in a telephone directory that:**

- (1) **a child is offered or wanted for adoption; or**
- (2) **the person is able to place, locate, or receive a child for adoption.**

(b) **A person that publishes a telephone directory that is distributed in Indiana may publish an advertisement described in subsection (a) in the telephone directory only if the advertisement contains the following:**

- (1) **For an attorney licensed to practice law, the person's attorney number.**

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(2) For a child placing agency licensed under the laws of any state or the District of Columbia, the number on the person's child placing agency license.

(c) A person who knowingly or intentionally violates this section commits unauthorized adoption advertising, a Class A misdemeanor.

SECTION 15. IC 35-46-1-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 22. (a) As used in this section, "adoption services" means at least one (1) of the following services that is provided for compensation, an item of value, or reimbursement, either directly or indirectly, and provided either before or after the services are rendered:

- (1) Arranging for the placement of a child.
- (2) Identifying a child for adoption.
- (3) Matching adoptive parents with biological parents.
- (4) Arranging or facilitating an adoption.
- (5) Taking or acknowledging consents or surrenders for termination of parental rights for adoption purposes.
- (6) Performing background studies on:
 - (A) a child who is going to be adopted; or
 - (B) adoptive parents.
- (7) Making determinations concerning the best interests of a child and the appropriateness in placing the child for adoption.
- (8) Post-placement monitoring of a child before the child is adopted.

(b) As used in this section, the term "adoption services" does not include the following:

- (1) Legal services provided by an attorney licensed in Indiana.
- (2) Adoption related services provided by a governmental entity or a person appointed to perform an investigation by the court.
- (3) General education and training on adoption issues.
- (4) Post-adoption services, including supportive services to families to promote the well-being of members of adoptive families or birth families.

(c) This section does not apply to the following persons:

- (1) The department of child services, an agency or person authorized to act on behalf of the department of child services, or a similar agency in another state.
- (2) The division of family resources, an agency or person

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1 authorized to act on behalf of the division of family resources,
 2 or a similar agency in another state.
 3 (3) A county office of family and children in Indiana or a
 4 similar county office in another state.
 5 (4) A child placing agency licensed under the laws of Indiana
 6 or another state.
 7 (5) An attorney licensed to practice law in Indiana or another
 8 state.
 9 (6) A prospective biological parent or adoptive parent acting
 10 on the individual's own behalf.
 11 (d) A person who knowingly or intentionally provides, engages
 12 in, or facilitates adoption services to a birth parent or prospective
 13 adoptive parent who resides in Indiana commits unauthorized
 14 adoption facilitation, a Class A misdemeanor.
 15 SECTION 16. [EFFECTIVE JULY 1, 2007] IC 35-46-1-21 and
 16 IC 35-46-1-22, both as added by this act, apply only to crimes
 17 committed after June 30, 2007.

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SENATE MOTION

Madam President: I move that Senator Miller be added as second author of Senate Bill 534.

LUBBERS

SENATE MOTION

Madam President: I move that Senator Broden be added as coauthor of Senate Bill 534.

LUBBERS

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 534, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 42, delete "if the" and insert "**if:**".

Page 4, line 1, before "consent" begin a new line block indented and insert:

"(1) the".

Page 4, line 4, delete "." and insert "; **or**

(2) the mother executes a written consent to the substitution of a petitioner for the adoption."

Page 4, line 4, beginning with "The" begin a new line blocked left.

Page 4, line 22, delete ";" and insert "**and acknowledges that the person:**

(A) understood the consequences of the signing of the consent to adoption;

(B) freely and voluntarily signed the consent to adoption; and

(C) believes that adoption is in the best interests of the person to be adopted;"

Page 4, between lines 32 and 33, begin a new paragraph and insert:

"(c) If a hearing under this section is conducted by telephonic communication or video conferencing, the court shall ensure that the hearing is recorded."

Page 7, between lines 35 and 36, begin a new paragraph and insert:

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"SECTION 12. IC 34-24-3-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.5. A prospective adoptive parent may bring a civil action against a person who commits unauthorized adoption facilitation under IC 35-46-1-22, even if the person has not been prosecuted or convicted of the offense under IC 35-46-1-22. In an action under this section, a prospective adoptive parent may seek an award of the following:**

- (1) An amount not to exceed three (3) times the amount that the prospective adoptive parent paid for the adoption services provided to the prospective adoptive parent in the commission of unauthorized adoption facilitation under IC 35-46-1-22.**
- (2) The costs of the action.**
- (3) A reasonable attorney's fee.**

SECTION 13. IC 34-24-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3. It is not a defense to an action for punitive damages that the defendant is subject to criminal prosecution for the act or omission that gave rise to the civil action. However, a person may not recover both:**

- (1) punitive damages; and**
- (2) the amounts provided for under section 1 or 1.5 of this chapter."**

Page 7, line 38, delete "This section does not apply" and insert **"Only a person that is an attorney licensed to practice law or a child placing agency licensed under the laws of any state or the District of Columbia may advertise, on the person's own behalf, in a telephone directory that:**

- (1) a child is offered or wanted for adoption; or**
- (2) the person is able to place, locate, or receive a child for adoption.**

(b) A person that publishes a telephone directory that is distributed in Indiana may publish an advertisement described in subsection (a) in the telephone directory only if the advertisement contains the following:

- (1) For an attorney licensed to practice law, the person's attorney number.**
- (2) For a child placing agency licensed under the laws of any state or the District of Columbia, the number on the person's child placing agency license.**

(c) A person who knowingly or intentionally violates this section commits unauthorized adoption advertising, a Class A misdemeanor."

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Page 7, delete lines 39 through 42.

Page 8, delete lines 1 through 25.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 534 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

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